

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

**REDACTED**

CALLAWAY GOLF COMPANY,

Plaintiff,

v.

ACUSHNET COMPANY,

Defendant.

C. A. No. 06-91 (SLR)

**FILED UNDER SEAL – CONFIDENTIAL  
INFORMATION – SUBJECT TO  
PROTECTIVE ORDER – NOT TO BE  
DISCLOSED EXCEPT BY COURT  
ORDER OR WRITTEN STIPULATION  
OF THE PARTIES**

**DECLARATION OF THOMAS L. HALKOWSKI IN SUPPORT OF  
PLAINTIFF CALLAWAY GOLF COMPANY'S MOTION TO DISQUALIFY  
DEFENDANT ACUSHNET COMPANY'S EXPERT DAVID FELKER**

I, Thomas L. Halkowski, declare as follows:

1. I am a member of Fish & Richardson P.C., counsel of record in this action for Callaway Golf Company (“Callaway”). I am a member of the Bar of the State of Delaware in good standing and am admitted to this Court. I have personal knowledge of the matters stated in this declaration and would testify truthfully to them if called upon to do so.

2.

3. Attached to my declaration as Ex. B is a true and correct copy of a December 20, 2006 letter from Brain A. Rosenthal of Howrey LLP to Craig Compton of Fish & Richardson P.C. On December 20, 2006, Acushnet Company (“Acushnet”), through its attorneys, disclosed to Callaway Golf Company (“Callaway Golf”) that it had retained David L. Felker as an expert in the above-titled case. [See Ex. B.] Enclosed with the letter disclosing Dr. Felker to Callaway Golf was a copy of the protective order executed by Dr. Felker and a copy of Dr. Felker’s *curriculum vitae*. [Id.]

4. Attached to my declaration as Ex. C is a true and correct copy of a December 28, 2006 letter from Chad Shear of Fish & Richardson P.C. to Brian A. Rosenthal. On December 28, 2006, Callaway Golf objected to Acushnet disclosing any confidential information to Dr. Felker under the terms of the protective order entered in this case. [See Ex. C.]

5. Attached to my declaration as Ex. D is a true and correct copy of a January 10, 2007 letter from Chad Shear to Brian A. Rosenthal. Having received no response from Acushnet regarding Callaway Golf's objection to Dr. Felker as an expert, Callaway Golf sent a follow-up letter on January 10, 2007. [See Ex. D.]

6. Attached to my declaration as Ex. E is a true and correct copy of a January 12, 2007 letter from Brian A. Rosenthal to Chad Shear.

7. On January 17, 2007, I was advised that: (i) Roger Denning, a fellow Principal of Fish & Richardson P.C., met and conferred with Brian A. Rosenthal regarding Callaway Golf's objection to Dr. Felker serving as an expert for Acushnet; and (ii) the parties were not able to reach an agreement that Dr. Felker be precluded from consulting with Acushnet regarding this case.

8. Based on the Court's scheduling order entered in this case, fact discovery in this case is set to close on April 20, 2007. Expert discovery is set to begin on May 30, 2007, when the parties will exchange opening expert reports.

9. The parties have not yet taken any depositions in this case, and the only depositions that have been noticed are for records custodians to ensure proper collection of all responsive documents.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2007, at Wilmington, Delaware.

/s/ Thomas L. Halkowski  
Thomas L. Halkowski

**CERTIFICATE OF SERVICE**

I hereby certify that on January 17, 2007, I electronically filed the  
**DECLARATION OF THOMAS L. HALKOWSKI IN SUPPORT OF PLAINTIFF  
CALLAWAY GOLF COMPANY'S MOTION TO DISQUALIFY DEFENDANT  
ACUSHNET COMPANY'S EXPERT DAVID FELKER** with the Clerk of Court  
using CM/ECF which will send electronic notification of such filing(s) to the following  
Delaware counsel. In addition, the filing will also be sent via hand delivery:

Richard L. Horwitz  
David E. Moore  
Potter Anderson & Corroon LLP  
Hercules Plaza, 6<sup>th</sup> floor  
1313 N. Market Street  
Wilmington, DE 19801

Attorneys for Defendant  
ACUSHNET COMPANY

I hereby certify that on January 17, 2007, I have mailed by United States Postal  
Service, the document(s) to the following non-registered participants:

Joseph P. Lavelle  
Andrew R. Sommer  
Howrey LLP  
1299 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Attorneys for Defendant  
ACUSHNET COMPANY

/s/ Thomas L. Halkowski

Thomas L. Halkowski

## Exhibit A

REDACTED  
IN ITS ENTIRETY

## Exhibit B

DEC. 20. 2006 5:02PM HOWREY-SIMON

NO. 878 P. 2

**HOWREY**  
LLP

1299 Pennsylvania Avenue, NW  
Washington, DC 20004-2402  
T 202.783.0800  
F 202.383.6610  
www.howrey.com

December 20, 2006

VIA FACSIMILE

Craig Compton  
Fish & Richardson P.C.  
500 Arguello Street, Suite 500  
Redwood City, CA 94063-1526

Re: *Callaway v. Acushnet*

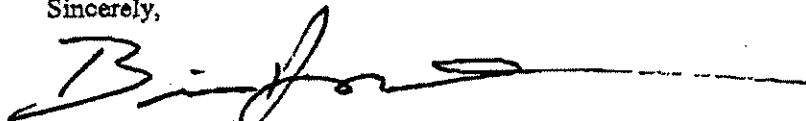
Dear Craig:

Enclosed is a copy of David L. Felker's executed Exhibit A to the Protective Order, as well as his list of clients and consulting engagements and curriculum vitae in the above-referenced matter. If you have any questions, please feel free to contact me.

Dr. Felker has consulted with the following companies in the last four years.

- 1) Acushnet vs. Nitro Leisure Products, 2001-2003  
(consultant for Acushnet)
- 2) Callaway Golf vs. Bridgestone Sports Co Ltd, 2001  
(consultant for Callaway Golf)
- 3) Callaway Golf vs. Dunlop Slazenger Group  
Americas, 2002-2004 (consultant for Callaway Golf)
- 4) Acushnet vs. Bridgestone Sports Co Ltd, 2005-2006  
(consultant for Acushnet)

Sincerely,



Brian A. Rosenthal

AMSTERDAM BRUSSELS CHICAGO HOUSTON IRVINE LONDON  
LOS ANGELES MENLO PARK NORTHERN VIRGINIA PARIS SAN FRANCISCO WASHINGTON, DC

DEC. 20. 2006 5:02PM HOWREY-SIMON

NO. 878 P. 3

12/19/2006 12:01 7504800007

SRA ESC

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CALLAWAY GOLF COMPANY,

Plaintiff,

v.

ACUSHNET COMPANY,

Defendant.

C. A. No. 06-91 (SLR)

I, David L. Felker, state that:

My business address is 9852 Harmony Grove Rd.  
Escondido, CA 92029

My present employer and job description are business owner  
and golf industry consultant

My relationship to the parties to this action is as follows expert

I have read and reviewed in its entirety the Protective Order ("Protective Order") entered in this matter.

I hereby agree to be bound by and comply with the terms of the Protective Order, and not to disseminate or disclose any information subject to the Protective Order that I review or about which I am told, to any person, entity, party, or agency for any reason, except in accordance with the terms of the Protective Order.

I understand that contempt sanctions may be entered for violation of this Protective Order and further agree to submit to the jurisdiction of this Court for the purposes of enforcement of the terms of this Protective Order.



DEC. 20. 2006 5:03PM HOWREY-SIMON

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12/19/2006 12:01 7504809007

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DATED this 19 day of December, 2006

  
Signature

David L. Felter

(Typed or Printed Name)

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HOWREY-SIMON

NO. 878 P. 5

**David L. Felker, PhD**  
8852 Harmony Grove Road  
Escondido, CA 92029  
760-468-0816(mobile)  
760-480-7515 x13(office)

**2/01-present Co-Owner, Sanford Rose Associates- Del Mar**

- Retained executive search firm filling primarily Director to CEO positions in the Pharmaceutical and Biotechnology industries throughout the USA.

**1/01 – present Golf Ball Industry Consultant/Expert Witness**

- Provide technical advice and expert testimony in golf ball technology-related cases.
- Perform patent analysis and provide technical advice.
- Lead scientific efforts to demonstrate performance differences between golf products for the purpose of providing evidence to support the client's legal position.
- Perform/direct physical property testing and outdoor performance comparison testing efforts.
- Direct/perform statistically designed experiments and thorough analysis of data.

**Depositions:**

5/8/01 Callaway Golf v. Bridgestone Sports Co. Ltd., Civil Action No. 1 00-CV-1871-JEC

3/6/02 Callaway Golf Company v. Dunlop Slazenger Group Americas, Inc.  
Civil Action No. 01-CV-669 RRM

5/22/02 Callaway Golf Company v. Dunlop Slazenger Group Americas, Inc.  
Civil Action No. 01-CV-669 RRM

2003 Nitro Leisure Products, LLC v. Acushnet Company, US District Court Southern District of Florida, Case No. 02-14008-CIV-Middlebrooks

**Declarations:**

Acushnet Company v. Nitro Leisure Products, LLC dba Golf ballsdirect.com and Second Chance, and Nitro Leisure Services, LLC dba Nitro Golf and Nitrogolf.com, US District Court Southern District of Florida, Case No. 02-14091-CIV-Roettger, 4/19/02

Nitro Leisure Products, LLC v. Acushnet Company, US District Court Southern District of Florida, Case No. 02-14008-CIV-Middlebrooks, 6/11/02

Nitro Leisure Products, LLC v. Acushnet Company, US District Court Southern District of Florida, Case No. 02-14008-CIV-Middlebrooks, 8/6/02

Nitro Leisure Products, LLC v. Acushnet Company, US District Court Southern District of Florida, Case No. 02-14008-CIV-Middlebrooks, 5/28/03

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**Expert Reports:**

"Remanufactured Golf Ball Testing and Results", 4/18/02

Expert Report for Nitro Leisure Products, LLC v. Acushnet Company, US District Court Southern District of Florida, Case No. 02-14008-CIV-Middlebrooks, 7/8/03

**Courtroom Testimony:**

8/04 Callaway Golf Company v. Dunlop Slazenger Group Americas, Inc.  
Civil Action No. 01-CV-669 RRM

**12/96-10/00 Vice President of Research & Development, Callaway Golf Ball Company, Carlsbad, CA (Start-Up Company wholly owned subsidiary of Callaway Golf Company)**

- Charter member of executive team that built \$170 M Start-up Company from scratch.
- Designed and developed the entire R&D function and company's first products; \$6M R&D annual operating budget; jointly responsible for Golf Ball Company P&L.
- Lead the effort that produced four *Demonstrably Superior and Pleasingly Different* (DSPD) golf ball models: *Rule 35*, *CTU 30*, *CB-1* and *HX*". Total sales for these four products were \$55M in 2001. The Rule 35's performance set a new standard that stunned the golf ball industry. Additionally, the "HX" is revolutionary in that it is a "dimple free" golf ball.
- Lead the patent effort that enabled the introduction of patented products in an extremely crowded art; did so without legal issues at product launch.
- Inventor of golf ball/club products and golf ball manufacturing processes.

**PATENTS**

- 5,984,807 Golf Ball
- 6,200,512 Method of Manufacturing a Golf Ball
- 6,213,892 Multi-layer Golf Ball
- 6,245,386 Method and system for finishing a golf ball
- 6,390,932 Compliant polymer face golf club head
- 6,440,346 Method for making golf ball
- 6,607,451 Compliant polymer face golf club head
- 6,786,837 Golf balls and methods of manufacturing the same

**11/94-12/96: Technology Superintendent - Neoprene, DuPont Dow Elastomers, Louisville, KY**

- Responsible for: World-wide Neoprene Adhesives and Latex Development & Technical Services, Hypalon™ Adhesives Development & Tech Services, Louisville Manufacturing Technical Support (worlds largest polychloroprene facility), Capital Project Implementation (\$15-25M in capital projects/yr), World-wide Neoprene Research & Development, Technical support of Quality Control and Environmental Laboratories
- Directed 50 person organization; \$6M Technology Budget
- Leader of high priority Task Team of scientists from DuPont, DuPont-Dow Elastomers and various Universities working on the next generation process and products.

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HOWREY-SIMON

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**9/91-11/94: Technical Area Superintendent - Neoprene, DuPont Company, Louisville, KY**

- Responsible for: Manufacturing Engineering & Process Support, Capital Project Implementation (\$10-40M in Capital projects/yr), ISO 9000 Certification, Quality Control and Environmental Laboratories, and Technical Computing Upgrade. Managed 16 person organization; \$2M Technology Budget.
- Working-Leader of International Task Team that solved 40 yr old Neoprene Quality/Manufacturing problem, delivering >\$10M/yr ATOI.

**9/90-9/91: Hypalon™ Technology Area Superintendent****Elastomers Division, DuPont Beaumont Works, Beaumont, TX**

Responsibilities same as 9/89-9/90 position plus responsible for :

- Research & Development of a CCL<sub>4</sub>-free Commercial HYPALON™ Process.
- Process development and production of chlorinated EVA/PE polymer in elastomer plant.
- Montreal Protocol liaison for HYPALON™ Business.
- Assembled and lead task team of scientists, lobbyists, and lawyers who developed and implemented a creative win/win solution to a HYPALON™ environmental problem that literally saved the business (\$>30M NPV). Received DuPont Board of Directors Award for preventing Shutdown of HYPALON™ Business.

**9/89-9/90: Hypalon™ Manufacturing Technology Area Superintendent**

- Managed group of 10 responsible for Plant Manufacturing Engineering, Capital Project Implementation, Technical support of Quality Control and Environmental Laboratories
- Received DuPont Award for increasing plant production of Cl-EVA 400% using fundamental process understandings and statistically designed experiments.

**9/86-9/87: Product Development Engineer: Nylon Compounding/Elastomer Toughened Polymers, DuPont Washington Works Plant, Parkersburg, WV**

Developed family of elastomer toughened/reinforced ZYTBL™ compounded products with super high flow properties. Responsible for plant engineering support for carbon black filled Nylon and polyester products.

**9/87-9/89 Manufacturing Engineer: DuPont Advanced Glazing Venture, Parkersburg, WV**

Part of Team that successfully developed and introduced the Anti-Lacerative Windshield™ and SpallShield™. Primarily responsible for pilot plant operation and managing contract coating operations with w/ Polaroid Corp, Custom Coating & Laminating Inc. and Rexham Corp.

**10/84-9/86: Research Engineer Long Range Research Group****Polymer Products Department, DuPont Experimental Station, Wilmington, DE**

Product and Process R&D focused on a ARYLON™ (new aromatic polyester targeted at the auto industry).

DEC. 20. 2006 5:12PM

HOWREY-SIMON

NO. 878 P. 8

**EDUCATION:**

Aug 1984: Iowa State University, Ames, Iowa

Ph.D. Chemical Engineering. Thesis: Electrochemical dissolution of copper sulphide minerals using a Fluidized Bed Electrochemical Reactor.

Recipient of the Iowa State University Mining & Mineral Resources Research Institute Fellowship, 1981-1983.

M.S. Chemical Engineering Aug 1982. Thesis work included experimental and mathematical studies dealing with the electrodeposition of copper using a fluidized bed electrochemical reactor.

University of Wisconsin-Eau Claire, Eau Claire, Wisconsin 1976-1979

Received B.S. in Chemistry May of 1979. Class work included advanced organic chemistry and several semesters of independent research.

**OTHER ACADEMIC RESEARCH EXPERIENCE:**

1979--National Science Foundation Undergraduate Research Participant. Worked under the guidance of Dr. George A. Kraus, Department of Chemistry, Iowa State University. Research included the investigation of the reaction of dienolate anions with Michael acceptors.

1977-1979--Research Assistant at the University of Wisconsin-Eau Claire. Worked under the guidance of Dr. William C. Groutas. Research included the synthesis of functionalized alpha methylene valerolactones fused to substituted aromatic rings, pancreatic elastase inhibiting imidazole-N-carboxamides, and N,N'-ethylene bis [2(2-hydroxy-5bromophenyl)] glycine.

**PAPERS PUBLISHED**

William C. Groutas and David L. Felker, "Synthetic applications of Cyanotrimethylsilane, Iodotrimethylsilane, Azidotrimethylsilane, and Methylthiotrimethylsilane," *Synthesis*, No. 11, 861-868, November (1980).

William C. Groutas, David L. Felker, David R. Magnin, George Meitzner, and Terry Gaynor, "Synthesis of Functionalized Alpha-Methylene Lactones" *Synthetic Communications* 10 (1), 1-9 (1980)

William C. Groutas, David L. Felker and David R. Magnin, "Synthesis of Aromatic AlphaMethylene Lactones", *Synthetic Communications* 10 (5), 355-362 (1980).

William C. Groutas, R.C. Badger, T.D. Ocain, D.L. Felker, J. Frankson and M. Theodorakis, "Mechanism-Based Inhibitors of Elastase", *Biochemical and Biophysical Research Communications*, Vol. 95, No. 4, 1980-1894 (1980).

Michael C. Theodorakis, William C. Groutas, Alex J. Bermudez, David L. Felker, Stavroula Vani Stefanakou, David R. Magin, and Terry Gaynor, "Localization of Technetium-99mN,N'-ethylene-bis [2(2-hyd roxy-5-b romophenyl)] glycine and Technetium-99m-[N-2(2mercapto-1-oxo-propyl)glycine]] in the Hepatobiliary System", Submitted to *J. Pharmaceutical Sciences* for publication.

DEC. 20. 2006 5:12PM HOWREY-SIMON

NO. 878 P. 9

David L. Felker and Renato G. Bautista, "The Electrowinning of Copper Using a Side-By-Side Fluidized Bed Electrochemical Reactor", published in IE&C Process Design and Development.

David L. Felker and Renato G. Bautista, Electrochemical Processes in Recovering Metals from Ores, Journal of Metals, April 1990, 60-63.

Videotape : How to Grow Gourmet Oyster Mushrooms, April 1995

"Advances in Neoprene Technology", 1996 (definitive scientific text internally published in DuPont under my direction)

**PAPERS PRESENTED:**

22nd Undergraduate Chemistry Symposium, Minnesota Chapter of the American Chemical Society, Bethel College, Spring 1978, "Design and Synthesis of Potential Cytotoxic Agents", coauthored by William C. Groutas and David L. Felker, presented by David L. Felker.

Society of Mining Engineers of the AIME Fall Meeting and Exhibit, Minneapolis Auditorium and Convention Hall, Minneapolis, Minn., Oct. 22-24, 1980, "The Electrowinning of Copper from Sulphate Solutions in a Fluidized Bed Electrochemical Reactor", coauthored by Chang C. Ko, David L. Felker, Harvey Jensen, and Renato G. Bautista, presented by David Felker.

The Metallurgical Society of the AIME Annual Meeting, Dallas Convention Center, Dallas, Texas, Feb. 14-18, 1982, "Design Considerations for the Scale-Up of a Fluidized Bed Electrochemical Reactor (FBER)", coauthored by David L. Felker and Renato G. Bautista, presented by David L. Felker.

The Metallurgical Society of the AIME Annual Meeting, Hyatt Regency Hotel, Atlanta, Georgia, March 6-10, 1983, "A Model for Predicting the Concentration-Time Relationship using a FBER", coauthored by David L. Felker and Renato G. Bautista, presented by Renato G. Bautista.

TMS-SME Annual Mtg, Denver, Colorado, Feb 24-27, 1987, "A mathematical model for the electrochemical reduction of chalcopyrites using a fluidized bed electrochemical reactor", coauthored by David L. Felker and Renato G. Bautista, presented by David L. Felker.

TMS-SME Annual Mtg, Denver, Colorado, Feb 24-27, 1987, "The two-stage dissolution and separation of Cu, Fe, and S from chalcopyrite using a fluidized bed electrochemical reactor", coauthored by David L. Felker and Renato G. Bautista, presented by David L. Felker.

Proprietary Presentations at DuPont Polymer Products Department annual TECH-CON, 1985, 1986.

Proprietary Presentation at DuPont Polymer Products Department annual Polymer Compounding Conference, Parkersburg WV, 1987.

**PERSONAL DATA:**

U.S. Citizen, married, born 6/10/57, 6'1", 195 lbs., excellent health.

Hobbies and interests include art, travel, hiking, flying, golf and fly-fishing.

DEC. 20. 2006 5:02PM

HOWREY-SIMON

NO. 878 P. 1

**HOWREY**

1299 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, DC 20004-2402  
PHONE: 202.783.0800 • FAX: 202.383.6610

**FACSIMILE COVER SHEET**

DEC 20 2006

**DATE:** December 20, 2006

**TO:** **NAME:** Craig Compton  
**COMPANY:** Fish & Richardson P.C.  
**FAX NUMBER:** 650-839-5071 **PHONE NUMBER:** 650-839-5070  
**CITY:** Redwood City, CA

**FROM:** **NAME:** Brian Rosenthal  
**DIRECT DIAL NUMBER:** 202-383-7108 **USER ID:** 1877  
**NUMBER OF PAGES, INCLUDING COVER:** 9 **CHARGE NUMBER:** 05604.0016.000000

☐ **ORIGINAL WILL FOLLOW VIA:**☐ **REGULAR MAIL**☐ **OVERNIGHT DELIVERY**☐ **HAND DELIVERY**☐ **OTHER:** \_\_\_\_\_☐ **ORIGINAL WILL NOT FOLLOW****SUPPLEMENTAL MESSAGE:**

THE INFORMATION CONTAINED IN THIS TRANSMISSION IS PRIVILEGED AND CONFIDENTIAL. IT IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

IF THERE ARE ANY QUESTIONS OR PROBLEMS WITH THE TRANSMISSION OF THIS FACSIMILE, PLEASE CALL 202.383.7147.

## Exhibit C



## FISH & RICHARDSON P.C.

Frederick P. Fish  
1855-1930

W.K. Richardson  
1859-1951

**VIA FACSIMILE AND U.S. MAIL**  
(202) 383-6610

December 28, 2006

Brian Rosenthal, Esq.  
Howrey LLP  
1299 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-2402

12390 El Camino Real  
San Diego, California  
92130

Telephone  
858 678-5070

Facsimile  
858 678-5099

Web Site  
www.fr.com

**W. Chad Shear**  
858 678-4358

Email  
shear@fr.com

Re: Callaway v. Acushnet  
USDC-D. Del. - C. A. No. 06-91 (SLR)

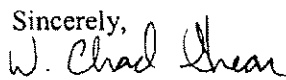


ATLANTA  
AUSTIN  
BOSTON  
DALLAS  
DELAWARE  
NEW YORK  
SAN DIEGO  
SILICON VALLEY  
TWIN CITIES  
WASHINGTON, DC

Dear Mr. Rosenthal:

We received your letter of December 20, 2006, identifying David Felker as a potential consultant to Acushnet in this litigation and proposing to disclose confidential information to him. Pursuant to Section VII.A of the Protective Order, Callaway Golf objects to the disclosure of confidential information to Dr. Felker. Callaway Golf further objects to any attempt by Acushnet to retain Dr. Felker as either a consultant or a testifying expert, and as set forth in Section VII.A.1 of the Protective Order, Callaway Golf requests that Acushnet notify Callaway Golf immediately if such a relationship exists, has been discussed, or is contemplated for the future.

As you know, David Felker has been associated with Callaway Golf for over ten years. In addition to serving as Vice President of Research and Development for Callaway Golf Ball Company, Dr. Felker served as an expert witness for Callaway Golf in previous litigation. In those roles, Dr. Felker has spent hundreds of hours consulting with Callaway Golf's inside and outside counsel on patent issues, and he has been privy to Callaway Golf's impressions and legal strategies regarding patent validity and infringement. That work extended to patents on three-piece golf balls like those at issue in this litigation. For those reasons, Dr. Felker cannot serve as a consultant or expert for Acushnet in this litigation. Furthermore, because *any* contact with Dr. Felker regarding issues involved in this matter presents a substantial risk of improper disclosure of Callaway's privileged communications, Callaway respectfully requests that any such communications cease until these issues can be presented to the Court.

Sincerely,  
  
W. Chad Shear

WCS/npj

10695126.doc

TRANSMISSION VERIFICATION REPORT

TIME : 12/28/2006 16:21  
NAME :  
FAX : 13128612280  
TEL :  
SER. # : BR0D5J246123

DATE, TIME	12/28 16:21
FAX NO./NAME	912023836610
DURATION	00:00:36
PAGE(S)	02
RESULT	OK
MODE	STANDARD
	ECM

FISH & RICHARDSON P.C.

12390 El Camino Real  
San Diego, California  
92130

Telephone  
858 678-5070

Facsimile  
858 678-5099

Web Site  
[www.fr.com](http://www.fr.com)

Date December 28, 2006

To Brian Rosenthal, Esq.  
Howrey LLP  
1299 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-2402  
Telephone: (202) 783-0800

Facsimile number 16656-00153531 / (202) 383-6610

From W. Chad Shear

Re Callaway v. Acushnet  
USDC - D. Del. - C.A. No. 06-91 (SLR)

Number of pages  
including this page 2

Message Please see attached letter.

## Exhibit D

## FISH & RICHARDSON P.C.

Frederick P. Fish  
1855-1930

W.K. Richardson  
1859-1951

**VIA FACSIMILE AND U.S. MAIL**  
(202) 383-6610

January 10, 2007

Brian Rosenthal, Esq.  
Howrey LLP  
1299 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-2402

Re: Callaway v. Acushnet  
USDC-D. Del. - C. A. No. 06-91 (SLR)



ATLANTA  
AUSTIN  
BOSTON  
DALLAS  
DELAWARE  
NEW YORK  
SAN DIEGO  
SILICON VALLEY  
TWIN CITIES  
WASHINGTON, DC

Dear Brian:

On December 28, 2006, we asked Acushnet to inform us immediately as to the status of its relationship with David Felker given the privileged and confidential nature of the information in his possession. It has been more than ten days and we have not heard a response. Therefore, Callaway Golf requests, again, that Acushnet inform us immediately of the status of its relationship with David Felker.

Sincerely,

W. Chad Shear

WCS/npj

10698145.doc

12390 El Camino Real  
San Diego, California  
92130

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**W. Chad Shear**  
858 678-4358

Email  
shear@fr.com

TRANSMISSION VERIFICATION REPORT

TIME : 01/10/2007 16:28  
NAME :  
FAX : 13128612200  
TEL :  
SER.# : BROD5J246123

DATE, TIME	01/10 16:28
FAX NO./NAME	912023836510
DURATION	00:00:27
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

FISH & RICHARDSON P.C.

12390 El Camino Real  
San Diego, California  
92130

Telephone  
858 678-5070

Facsimile  
858 678-5099

Web Site  
[www.fr.com](http://www.fr.com)

Date January 10, 2007

To Brian Rosenthal, Esq.  
Howrey LLP  
1299 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-2402  
Telephone: (202) 783-0800

Facsimile number 16656-00153531 / (202) 383-6610

From W. Chad Shear

Re Callaway v. Acushnet  
USDC - D. Del. - C.A. No. 06-91 (SLR)

Number of pages  
including this page 2

Message Please see attached.

## Exhibit E

# HOWREY<sup>LLP</sup>

1299 Pennsylvania Avenue, NW  
Washington, DC 20004-2402  
T 202.783.0800  
F 202.383.6610  
www.howrey.com

January 12, 2007

VIA FACSIMILE

W. Chad Shear, Esq.  
Fish & Richardson P.C.  
12390 El Camino Real  
San Diego, CA 92130

Re: *Callaway v. Acushnet*

Dear Mr. Shear:

This responds to your letters dated January 10, 2007 and December 28, 2006 regarding Acushnet's relationship with David Felker.

Acushnet has engaged Dr. Felker for potential expert consultation and/or testimony in this case. However, given Callaway's concerns regarding its perceived conflict of interest, Acushnet has not begun working with Dr. Felker in any way related to this litigation. To be clear, Acushnet has not provided any Callaway confidential information to Dr. Felker regarding this matter, and Dr. Felker has performed no work for Acushnet regarding this matter.

Acushnet is continuing its investigation into the objections and concerns you raised in your December 28, 2006, letter, and we will proceed accordingly once its investigation concludes. Please call me if you wish to discuss this matter further.

Sincerely,



Brian A. Rosenthal